



106TH CONGRESS  
1ST SESSION

# S. 1200

To require equitable coverage of prescription contraceptive drugs and devices,  
and contraceptive services under health plans.

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## IN THE SENATE OF THE UNITED STATES

JUNE 10, 1999

Ms. SNOWE (for herself, Mr. REID, Mr. WARNER, Mr. TORRICELLI, Mr. JEFFORDS, Mr. MOYNIHAN, Mr. CHAFEE, Ms. MIKULSKI, Mr. SMITH of Oregon, Mrs. BOXER, Mr. SPECTER, Mr. DURBIN, Mrs. MURRAY, Mr. KERREY, Mr. ROBB, Mr. SCHUMER, Mr. JOHNSON, Mr. LAUTENBERG, Mr. CLELAND, Mr. LEAHY, Mr. HARKIN, Mr. DODD, Mr. KENNEDY, Mr. DASCHLE, Mrs. FEINSTEIN, Mrs. LINCOLN, Mr. INOUE, Mr. AKAKA, Mr. BAYH, Mr. LIEBERMAN, Mr. WELLSTONE, and Mr. BRYAN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To require equitable coverage of prescription contraceptive drugs and devices, and contraceptive services under health plans.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Equity in Prescription  
5 Insurance and Contraceptive Coverage Act of 1999".

1   **SEC. 2. FINDINGS.**

2       Congress finds that—

3           (1) each year, 3,000,000 pregnancies, or one  
4       half of all pregnancies, in this country are unin-  
5       tended;

6           (2) contraceptive services are part of basic  
7       health care, allowing families to both adequately  
8       space desired pregnancies and avoid unintended  
9       pregnancy;

10          (3) studies show that contraceptives are cost ef-  
11       fective: for every \$1 of public funds invested in fam-  
12       ily planning, \$4 to \$14 of public funds is saved in  
13       pregnancy and health care-related costs;

14          (4) by reducing rates of unintended pregnancy,  
15       contraceptives help reduce the need for abortion;

16          (5) unintended pregnancies lead to higher rates  
17       of infant mortality, low-birth weight, and maternal  
18       morbidity, and threaten the economic viability of  
19       families;

20          (6) the National Commission to Prevent Infant  
21       Mortality determined that “infant mortality could be  
22       reduced by 10 percent if all women not desiring  
23       pregnancy used contraception”;

24          (7) most women in the United States, including  
25       three-quarters of women of childbearing age, rely on  
26       some form of private insurance (through their own

1 employer, a family member's employer, or the indi-  
2 vidual market) to defray their medical expenses;

3 (8) the vast majority of private insurers cover  
4 prescription drugs, but many exclude coverage for  
5 prescription contraceptives;

6 (9) private insurance provides extremely limited  
7 coverage of contraceptives: half of traditional indem-  
8 nity plans and preferred provider organizations, 20  
9 percent of point-of-service networks, and 7 percent  
10 of health maintenance organizations cover no contra-  
11 ceptive methods other than sterilization;

12 (10) women of reproductive age spend 68 per-  
13 cent more than men on out-of-pocket health care  
14 costs, with contraceptives and reproductive health  
15 care services accounting for much of the difference;

16 (11) the lack of contraceptive coverage in health  
17 insurance places many effective forms of contracep-  
18 tives beyond the financial reach of many women,  
19 leading to unintended pregnancies;

20 (12) the Institute of Medicine Committee on  
21 Unintended Pregnancy recommended that "financial  
22 barriers to contraception be reduced by increasing  
23 the proportion of all health insurance policies that  
24 cover contraceptive services and supplies";

1           (13) in 1998, Congress agreed to provide con-  
 2       traceptive coverage to the 2,000,000 women of re-  
 3       productive age who are participating in the Federal  
 4       Employees Health Benefits Program, the largest  
 5       employer-sponsored health insurance plan in the  
 6       world; and

7           (14) eight in 10 privately insured adults sup-  
 8       port contraceptive coverage.

9       **SEC. 3. AMENDMENTS TO THE EMPLOYEE RETIREMENT IN-**  
 10       **COME SECURITY ACT OF 1974.**

11       (a) IN GENERAL.—Subpart B of part 7 of subtitle  
 12       B of title I of the Employee Retirement Income Security  
 13       Act of 1974 (29 U.S.C. 1185 et seq.) is amended by add-  
 14       ing at the end the following new section:

15       **“SEC. 714. STANDARDS RELATING TO BENEFITS FOR CON-**  
 16       **TRACEPTIVES.**

17       “(a) REQUIREMENTS FOR COVERAGE.—A group  
 18       health plan, and a health insurance issuer providing health  
 19       insurance coverage in connection with a group health plan,  
 20       may not—

21           “(1) exclude or restrict benefits for prescription  
 22       contraceptive drugs or devices approved by the Food  
 23       and Drug Administration, or generic equivalents ap-  
 24       proved as substitutable by the Food and Drug Ad-

1       ministration, if such plan provides benefits for other  
2       outpatient prescription drugs or devices; or

3       “(2) exclude or restrict benefits for outpatient  
4       contraceptive services if such plan provides benefits  
5       for other outpatient services provided by a health  
6       care professional (referred to in this section as ‘out-  
7       patient health care services’).

8       “(b) PROHIBITIONS.—A group health plan, and a  
9       health insurance issuer providing health insurance cov-  
10      erage in connection with a group health plan, may not—

11       “(1) deny to an individual eligibility, or contin-  
12      ued eligibility, to enroll or to renew coverage under  
13      the terms of the plan because of the individual’s or  
14      enrollee’s use or potential use of items or services  
15      that are covered in accordance with the requirements  
16      of this section;

17       “(2) provide monetary payments or rebates to  
18      a covered individual to encourage such individual to  
19      accept less than the minimum protections available  
20      under this section;

21       “(3) penalize or otherwise reduce or limit the  
22      reimbursement of a health care professional because  
23      such professional prescribed contraceptive drugs or  
24      devices, or provided contraceptive services, described  
25      in subsection (a), in accordance with this section; or

1           “(4) provide incentives (monetary or otherwise)  
 2           to a health care professional to induce such profes-  
 3           sional to withhold from a covered individual contra-  
 4           ceptive drugs or devices, or contraceptive services,  
 5           described in subsection (a).

6           “(c) RULES OF CONSTRUCTION.—

7           “(1) IN GENERAL.—Nothing in this section  
 8           shall be construed—

9                   “(A) as preventing a group health plan  
 10           and a health insurance issuer providing health  
 11           insurance coverage in connection with a group  
 12           health plan from imposing deductibles, coinsur-  
 13           ance, or other cost-sharing or limitations in re-  
 14           lation to—

15                   “(i) benefits for contraceptive drugs  
 16           under the plan, except that such a deduct-  
 17           ible, coinsurance, or other cost-sharing or  
 18           limitation for any such drug may not be  
 19           greater than such a deductible, coinsur-  
 20           ance, or cost-sharing or limitation for any  
 21           outpatient prescription drug otherwise cov-  
 22           ered under the plan;

23                   “(ii) benefits for contraceptive devices  
 24           under the plan, except that such a deduct-  
 25           ible, coinsurance, or other cost-sharing or

1 limitation for any such device may not be  
2 greater than such a deductible, coinsur-  
3 ance, or cost-sharing or limitation for any  
4 outpatient prescription device otherwise  
5 covered under the plan; and

6 “(iii) benefits for outpatient contra-  
7 ceptive services under the plan, except that  
8 such a deductible, coinsurance, or other  
9 cost-sharing or limitation for any such  
10 service may not be greater than such a de-  
11 ductible, coinsurance, or cost-sharing or  
12 limitation for any outpatient health care  
13 service otherwise covered under the plan;  
14 and

15 “(B) as requiring a group health plan and  
16 a health insurance issuer providing health in-  
17 surance coverage in connection with a group  
18 health plan to cover experimental or investiga-  
19 tional contraceptive drugs or devices, or experi-  
20 mental or investigational contraceptive services,  
21 described in subsection (a), except to the extent  
22 that the plan or issuer provides coverage for  
23 other experimental or investigational outpatient  
24 prescription drugs or devices, or experimental

1 or investigational outpatient health care serv-  
2 ices.

3 “(2) LIMITATIONS.—As used in paragraph (1),  
4 the term ‘limitation’ includes—

5 “(A) in the case of a contraceptive drug or  
6 device, restricting the type of health care pro-  
7 fessionals that may prescribe such drugs or de-  
8 vices, utilization review provisions, and limits on  
9 the volume of prescription drugs or devices that  
10 may be obtained on the basis of a single con-  
11 sultation with a professional; or

12 “(B) in the case of an outpatient contra-  
13 ceptive service, restricting the type of health  
14 care professionals that may provide such serv-  
15 ices, utilization review provisions, requirements  
16 relating to second opinions prior to the coverage  
17 of such services, and requirements relating to  
18 preauthorizations prior to the coverage of such  
19 services.

20 “(d) NOTICE UNDER GROUP HEALTH PLAN.—The  
21 imposition of the requirements of this section shall be  
22 treated as a material modification in the terms of the plan  
23 described in section 102(a)(1), for purposes of assuring  
24 notice of such requirements under the plan, except that  
25 the summary description required to be provided under the



1 last sentence of section 104(b)(1) with respect to such  
 2 modification shall be provided by not later than 60 days  
 3 after the first day of the first plan year in which such  
 4 requirements apply.

5       “(e) PREEMPTION.—Nothing in this section shall be  
 6 construed to preempt any provision of State law to the  
 7 extent that such State law establishes, implements, or con-  
 8 tinues in effect any standard or requirement that provides  
 9 protections for enrollees that are greater than the protec-  
 10 tions provided under this section.

11       “(f) DEFINITION.—In this section, the term ‘out-  
 12 patient contraceptive services’ means consultations, exami-  
 13 nations, procedures, and medical services, provided on an  
 14 outpatient basis and related to the use of contraceptive  
 15 methods (including natural family planning) to prevent an  
 16 unintended pregnancy.”.

17       (b) CLERICAL AMENDMENT.—The table of contents  
 18 in section 1 of the Employee Retirement Income Security  
 19 Act of 1974 (29 U.S.C. 1001 note) is amended by insert-  
 20 ing after the item relating to section 713 the following  
 21 new item:

“Sec. 714. Standards relating to benefits for contraceptives.”.

22       (c) EFFECTIVE DATE.—The amendments made by  
 23 this section shall apply with respect to plan years begin-  
 24 ning on or after January 1, 2000.

1 SEC. 4. AMENDMENTS TO THE PUBLIC HEALTH SERVICE

2 ACT RELATING TO THE GROUP MARKET.

3 (a) IN GENERAL.—Subpart 2 of part A of title  
4 XXVII of the Public Health Service Act (42 U.S.C.  
5 300gg-4 et seq.) is amended by adding at the end the  
6 following new section:

7 “SEC. 2707. STANDARDS RELATING TO BENEFITS FOR CON-

8 TRACEPTIVES.

9 “(a) REQUIREMENTS FOR COVERAGE.—A group  
10 health plan, and a health insurance issuer providing health  
11 insurance coverage in connection with a group health plan,  
12 may not—

13 “(1) exclude or restrict benefits for prescription  
14 contraceptive drugs or devices approved by the Food  
15 and Drug Administration, or generic equivalents ap-  
16 proved as substitutable by the Food and Drug Ad-  
17 ministration, if such plan provides benefits for other  
18 outpatient prescription drugs or devices; or

19 “(2) exclude or restrict benefits for outpatient  
20 contraceptive services if such plan provides benefits  
21 for other outpatient services provided by a health  
22 care professional (referred to in this section as ‘out-  
23 patient health care services’).

24 “(b) PROHIBITIONS.—A group health plan, and a  
25 health insurance issuer providing health insurance cov-  
26 erage in connection with a group health plan, may not—

1           “(1) deny to an individual eligibility, or contin-  
 2           ued eligibility, to enroll or to renew coverage under  
 3           the terms of the plan because of the individual’s or  
 4           enrollee’s use or potential use of items or services  
 5           that are covered in accordance with the requirements  
 6           of this section;

7           “(2) provide monetary payments or rebates to  
 8           a covered individual to encourage such individual to  
 9           accept less than the minimum protections available  
 10          under this section;

11          “(3) penalize or otherwise reduce or limit the  
 12          reimbursement of a health care professional because  
 13          such professional prescribed contraceptive drugs or  
 14          devices, or provided contraceptive services, described  
 15          in subsection (a), in accordance with this section; or

16          “(4) provide incentives (monetary or otherwise)  
 17          to a health care professional to induce such profes-  
 18          sional to withhold from covered individual contracep-  
 19          tive drugs or devices, or contraceptive services, de-  
 20          scribed in subsection (a).

21          “(c) RULES OF CONSTRUCTION.—

22               “(1) IN GENERAL.—Nothing in this section  
 23               shall be construed—

24                       “(A) as preventing a group health plan  
 25                       and a health insurance issuer providing health

1 insurance coverage in connection with a group  
2 health plan from imposing deductibles, coinsur-  
3 ance, or other cost-sharing or limitations in re-  
4 lation to—

5 “(i) benefits for contraceptive drugs  
6 under the plan, except that such a deduct-  
7 ible, coinsurance, or other cost-sharing or  
8 limitation for any such drug may not be  
9 greater than such a deductible, coinsur-  
10 ance, or cost-sharing or limitation for any  
11 outpatient prescription drug otherwise cov-  
12 ered under the plan;

13 “(ii) benefits for contraceptive devices  
14 under the plan, except that such a deduct-  
15 ible, coinsurance, or other cost-sharing or  
16 limitation for any such device may not be  
17 greater than such a deductible, coinsur-  
18 ance, or cost-sharing or limitation for any  
19 outpatient prescription device otherwise  
20 covered under the plan; and

21 “(iii) benefits for outpatient contra-  
22 ceptive services under the plan, except that  
23 such a deductible, coinsurance, or other  
24 cost-sharing or limitation for any such  
25 service may not be greater than such a de-

1 ductible, coinsurance, or cost-sharing or  
2 limitation for any outpatient health care  
3 service otherwise covered under the plan;  
4 and

5 “(B) as requiring a group health plan and  
6 a health insurance issuer providing health in-  
7 surance coverage in connection with a group  
8 health plan to cover experimental or investiga-  
9 tional contraceptive drugs or devices, or experi-  
10 mental or investigational contraceptive services,  
11 described in subsection (a), except to the extent  
12 that the plan or issuer provides coverage for  
13 other experimental or investigational outpatient  
14 prescription drugs or devices, or experimental  
15 or investigational outpatient health care serv-  
16 ices.

17 “(2) LIMITATIONS.—As used in paragraph (1),  
18 the term ‘limitation’ includes—

19 “(A) in the case of a contraceptive drug or  
20 device, restricting the type of health care pro-  
21 fessionals that may prescribe such drugs or de-  
22 vices, utilization review provisions, and limits on  
23 the volume of prescription drugs or devices that  
24 may be obtained on the basis of a single con-  
25 sultation with a professional; or

1           “(B) in the case of an outpatient contra-  
2           ceptive service, restricting the type of health  
3           care professionals that may provide such serv-  
4           ices, utilization review provisions, requirements  
5           relating to second opinions prior to the coverage  
6           of such services, and requirements relating to  
7           preauthorizations prior to the coverage of such  
8           services.

9           “(d) NOTICE.—A group health plan under this part  
10          shall comply with the notice requirement under section  
11          714(d) of the Employee Retirement Income Security Act  
12          of 1974 with respect to the requirements of this section  
13          as if such section applied to such plan.

14          “(e) PREEMPTION.—Nothing in this section shall be  
15          construed to preempt any provision of State law to the  
16          extent that such State law establishes, implements, or con-  
17          tinues in effect any standard or requirement that provides  
18          protections for enrollees that are greater than the protec-  
19          tions provided under this section.

20          “(f) DEFINITION.—In this section, the term ‘out-  
21          patient contraceptive services’ means consultations, exami-  
22          nations, procedures, and medical services, provided on an  
23          outpatient basis and related to the use of contraceptive  
24          methods (including natural family planning) to prevent an  
25          unintended pregnancy.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to group health plans for plan years beginning on or after January 1, 2000.

**SEC. 5. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT  
RELATING TO THE INDIVIDUAL MARKET.**

(a) IN GENERAL.—Part B of title XXVII of the Public Health Service Act (42 U.S.C. 300gg–41 et seq.) is amended—

(1) by redesignating the first subpart 3 (relating to other requirements) as subpart 2; and

(2) by adding at the end of subpart 2 the following new section:

**“SEC. 2753. STANDARDS RELATING TO BENEFITS FOR CONTRACEPTIVES.**

“The provisions of section 2707 shall apply to health insurance coverage offered by a health insurance issuer in the individual market in the same manner as they apply to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the small or large group market.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market on or after January 1, 2000.

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